

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA, *ex rel.*
SARAH BEHNKE

Plaintiffs,

v.

CVS CAREMARK CORPORATION,
CAREMARK Rx, LLC (f/k/a CAREMARK
Rx, INC.), CAREMARKPCS HEALTH LLC,
and CAREMARK PART D SERVICES,
LLC,

Defendants.

Civil Action No. 2:14-cv-00824 (MSG)

**STIPULATION AND [PROPOSED] ORDER REGARDING THE NON-DISCLOSURE
OF CERTAIN INFORMATION REGARDING EXPERT WITNESSES**

The parties hereto, through their respective counsel, hereby stipulate to the following regarding the scope of expert discovery and testimony relating to all testifying experts in this matter:

1. No subpoenas (for depositions or documents) need be served on any testifying expert from whom a report is provided in this case. Instead, the party retaining such expert will make him or her available for deposition, at a time mutually agreed to by the parties.
2. Within three business days of service of an expert report, the party submitting such a report shall produce where feasible: (i) the data, facts, or other information relied upon by the expert in forming the expert witness's opinions, to the extent not already produced in the litigation, that the other party does not already possess, or that are not publicly-available

materials;¹ (ii) computerized regression analysis and/or other underlying reports, programs, computer codes and schedules (including all linked data files, input and output files, and formulas contained within spreadsheet cells or in SAS, STATA or other programs) sufficient to reconstruct the work, calculations, and/or analyses upon which the expert witness is relying for his/her opinions and to reconstruct the charts, tables, exhibits or other figures included in the expert's report; and (iii) any exhibits that will be used to summarize or support the expert witness's opinions.² This information shall be produced electronically (via email, disc or FTP site) and in native format where feasible.

3. The below-listed categories of documents, communications, and other recording media need not be disclosed by any party, and may not be the subject of examination at deposition, hearing, or trial, and the parties shall not be obligated to preserve such information in any form or include such information on any privilege log:

a. any notes or other writings taken or prepared by or for an expert witness in connection with this matter (aside from the written expert report(s) and notes generated while testifying), including written correspondence or memoranda to or from, and notes of conversations between and among: (a) the expert witness and the expert's assistants and/or staff; (b) (i) the expert witness and the expert's assistants and/or staff and (ii) any other expert witnesses or non-testifying expert consultant and their respective assistants and/or staff; (c) the

¹ Documents that are publicly available need not be produced absent specific request if they are identified with sufficient specificity to allow the opposing side to locate and obtain the document.

² This includes only exhibits to and/or referenced in the reports and does not encompass demonstrative exhibits that may be used during trial or in other proceedings.

expert witness and the expert's assistants and/or staff and any party; or (d) the expert witness and the expert's assistants and/or staff and attorneys for any party;

b. copies of materials produced by any party in this litigation bearing the notes, markings, or comments of the expert, the expert's assistants and/or staff, other expert witnesses or non-testifying expert consultants (including their staffs), or attorneys for the party or parties;

c. any preliminary work created or generated by or for experts or their staffs or agents (unless such notes are generated while testifying), including draft reports, draft studies, draft work papers, draft declarations, or other draft materials or preliminary work product, prepared for, by, or at the direction of an expert witness or his or her staff, regardless of the form in which the draft is recorded;³ and

d. any oral or written communications between and among an expert witness and the expert's respective assistants and/or staff, other expert witnesses or non-testifying expert consultants (including their assistants and staffs), any party, or attorneys for the party or parties, regardless of the form of the communications, except to the extent the communications relate to compensation for the expert's work or testimony.

4. The foregoing exclusions from discovery set forth in Paragraph 3 do not apply to information, communications, or documents upon which the expert relies as a basis for his or her opinion(s).

³ To avoid any doubt, suggestions from Counsel regarding revisions to the form of the expert's report, or additional support for the expert's ultimate opinions are examples of the kind of communications that, under Paragraph 3 are not subject to discovery.

IT IS SO STIPULATED, through counsel of the parties.

Dated: June 8, 2021

STIPULATED AND AGREED TO BY:

/s/ Susan Schneider Thomas

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Attorneys for Plaintiff-Relator

IT SO ORDERED.

Dated: _____

The Honorable Mitchell S. Goldberg
United States District Judge